

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT A. GONZALES,)	
)	
Petitioner,)	No. C 04-0084 CRB (PR)
)	
vs.)	ORDER REOPENING CASE
)	
SCOTT KERNAN, Warden,)	
)	
Respondent.)	
_____)	

Per order filed on April 29, 2005, the court granted petitioner's motion/request for a stay to permit him to return to state court to exhaust new claims, and instructed the clerk to administratively close the case. The court advised petitioner that "[n]othing further will take place in this matter until petitioner exhausts the new claims, and, within 30 days thereafter, moves to reopen the case, lift the court's stay and amend the stayed petition to add the newly-exhausted claims."

Petitioner has filed a "response" to the court's April 29, 2005 order, informing the court that he only recently learned that the state supreme court had denied his claims. He has also attached a proposed first amended petition ("FAP") containing all now-exhausted claims.

1 Good cause appearing, the clerk is instructed to reopen the case and file
2 the proposed FAP, which contains cognizable claims of ineffective assistance of
3 counsel and prosecutorial misconduct. The stay is hereby lifted.

4 Within 60 days of the issuance of this order, respondent shall file an
5 answer conforming in all respects to Rule 5 of the Rules Governing Section 2254
6 Cases, showing cause why a writ of habeas corpus should not be granted.
7 Respondent shall file with the answer and serve on petitioner a copy of all
8 portions of the state trial record that have been transcribed previously and that are
9 relevant to a determination of the issues presented by the petition.

10 If petitioner wishes to respond to the answer, he shall do so by filing a
11 traverse with the court and serving it on respondent within 30 days of his receipt
12 of the answer.

13 Respondent may file a motion to dismiss on procedural grounds in lieu of
14 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
15 Governing Section 2254 Cases. If respondent files such a motion, petitioner shall
16 file with the court and serve on respondent an opposition or statement of non-
17 opposition within 30 days of receipt of the motion, and respondent shall file with
18 the court and serve on petitioner a reply within 15 days of receipt of any
19 opposition.

20 Petitioner is reminded that all communications with the court must be
21 served on respondent by mailing a true copy of the document to respondent's
22 counsel. Petitioner must also keep the court and all parties informed of any
23 change of address.

24 SO ORDERED.

25 DATED: April 25, 2007

26 
27 CHARLES R. BREYER
28 United States District Judge